

Consultation paper

Proposals for Family Court Rule changes to enable Te Au Reka to be implemented in the Family Court

September 2023

I. Overview

In a major new initiative, the Ministry of Justice (the Ministry) and the judiciary are setting out to modernise the administration of justice through the courts and tribunals of Aotearoa New Zealand.

Te Au Reka will be implemented first in the Family Court. This consultation paper seeks your input on areas of the Family Court Rules 2002 (*the Rules*) where changes may be required to enable the successful implementation and operation of Te Au Reka in the Family Court.

What is Te Au Reka?

Te Au Reka is a phrase used in a Tairāwhiti karakia for opening a new meeting house. Te Au translates as 'current' or 'flow', and Reka translates as 'sweet, palatable and pleasant.' Te Au Reka means 'the sweet flow'. Te Au Reka conjures an image of a case and court management system that enables court processes to flow seamlessly from beginning to end. Te Au Reka stands at the doorway of a modern court and tribunal system that is trusted, safe and responds to the needs of its users. It will support access to justice, and positively impact those who interact with the court, making it easier to engage with the court and know what is happening. Te Au Reka will support modern and effective case management, judicial decision making, court and tribunal management, and will enable participants to file information and engage through an online portal with the courts and tribunals. When complete, engaging with courts and tribunals will be simpler, faster, and easier.

Te Au Reka comprises modern digital capability in four key areas, as follows:

- logistics management – supporting rostering, scheduling, and associated staff and resource requirements
- content management – supporting the management of court information, including access and privacy settings
- procedure management – supporting the application of the procedural process, including judicial decisions, requirements of courts, and
- administration management – supporting the administrative activities that underpin the functioning of the court processes.

The full Te Au Reka capability model is available [here](#).¹ Parties will have the ability to file, pay fees and track the progression of their applications and cases online through a portal. Where appropriate, they will be able to access court documents and documents filed by other parties, providing them with a single trusted source of information about their case.

How will people interact with Te Au Reka?

Te Au Reka will include an external portal through which information can be submitted and accessed. The nature of the information that is available to court participants² will depend on who they are. For example, lawyers, applicants, respondents, and third-parties such as experts or specific service providers will be able to access information through the portal which would previously have been available to them in hard copy or by email.

Completing court tasks such as filing documents and submitting forms will be easier than they are currently. Often, when filing in the Family Court, multiple forms need to be completed. In Te Au Reka, parties will only need to provide information once. More broadly, those engaging with Te Au Reka to file information should not need to refer to the relevant court rules unless they choose to. This is because Te Au Reka itself will guide them through their application or submission.

All of this will be a substantial change for people engaging with courts, including the legal profession, so it needs to be managed carefully.

The concept of having a 'proper office of the court' will be retained in terms of specifying where appearances for proceedings will be held. However, Te Au Reka will better enable administrative court functions to be done in whatever location is most appropriate.

Not every court participant will choose to interact with the court through Te Au Reka, and maintaining access to justice is fundamental to this work. Accordingly, the use of the portal will be **optional** for court participants, except for lawyers. Lawyers will be required to use Te Au Reka to provide information to and receive information from the court.

¹[Te-Au-Reka-Capability-Model_October-2022.pdf \(justice.govt.nz\)](#)

² 'Court participants' refers to all external parties who will interact with the court record and will have a unique login to Te Au Reka, except for those interacting as a 'guest'. Court participants include parties and their lawyers, and, in relation to particular proceedings and as permitted by the Judge, they could include court-appointed counsel such as a lawyer for the child, family violence programme providers or supervised contact providers, Police, government departments such as Oranga Tamariki, Te Whatu Ora or ACC, not-for-profit agencies, specific medical professionals, report writers, interpreters, other service providers such as alcohol and drug clinicians, restorative justice providers, social workers, the Public Trust, and witnesses. People using Te Au Reka as guests will not have a unique login, and would only be able to access information they have submitted.

Digital Strategy for Courts and Tribunals

Te Au Reka is one of the high priority initiatives intended to implement the Digital Strategy for the Courts and Tribunals of Aotearoa New Zealand.³ The strategy sets out that:

- The judiciary's responsibilities in relation to conducting the business of courts and tribunals include the control and supervision of the use of technology for court/tribunal business. The Ministry's responsibilities include the provision, maintenance, and operation of that technology.
- The use of paper files limits the ability of courts and tribunals to perform their core function of delivering justice to all people in a simple, accessible, and timely manner, and to meet the reasonable expectations of court system participants.
- Current court systems create significant barriers to access to justice and contribute to significant disparities in access to justice.

The strategy notes that digital systems used in courts and tribunals in other countries have demonstrated the potential for digital technology to enhance access to justice by:

- making it simpler, faster, and cheaper to bring and defend civil claims
- providing participants with better information about the current status of proceedings
- reducing the need for people to attend in-person hearings, in particular on procedural matters, and
- helping to ensure that every hearing that does take place is a meaningful event because the parties and the court have all the information that they need in advance of that hearing.

What proceedings will Te Au Reka apply to?

Te Au Reka is intended to be implemented first in the Family Court, but over time it will be rolled out in other courts and tribunals. Te Au Reka will apply to new proceedings only. This means that proceedings lodged prior to the implementation of Te Au Reka will generally continue to be managed under the existing procedures and Rules. It is possible, however, depending on the system design, that a case starting prior to Te Au Reka may be managed in Te Au Reka on a case-by-case basis. As the design becomes clearer, we will work through how or when the Rules may apply to this situation.

³ [Digital Strategy for Courts and Tribunals of Aotearoa New Zealand — Courts of New Zealand \(courtsofnz.govt.nz\)](https://www.courtsofnz.govt.nz/digital-strategy-for-courts-and-tribunals-of-aotearoa-new-zealand-courts-of-new-zealand)

What does Te Au Reka mean for the Family Court Rules?

A number of the current Family Court Rules apply primarily to paper-based systems, rather than enabling key court processes to be conducted digitally in the way envisaged by Te Au Reka. Accordingly, to enable Te Au Reka to be implemented in the Family Court, changes to the Rules, or changes to the effect of some of those Rules, are required.

One possible way of changing the effect of the Rules could be through enabling the Electronic Courts and Tribunals Act 2016 in the Family Court.⁴ While we consider there is merit in this Act's approach, we do not consider it would now be sufficient to enable Te Au Reka. See the 'Note on Drafting' on page 6 and information in the Appendix relating to a possible 'principle-based' approach to drafting the required rule changes.

Objectives for the rule changes to enable Te Au Reka

The proposed objectives for this rule change work are that the changes:

- enable **access to justice** for Family Court participants
- enable Te Au Reka to be implemented in the Family Court, in such a way that the **opportunities of working digitally can be achieved in alignment with the Digital Strategy for Courts**⁵
- allow for **flexibility**:
 - to support co-existence between paper-based, existing electronic systems and Te Au Reka, and
 - where possible, to minimise the need for further rule changes related to Te Au Reka as new ways of working become available
- are made in a **timely** way, so that they do not hold up implementation of Te Au Reka
- are made with **awareness of broader court processes and procedures**, recognising that the Family Court doesn't operate in isolation, and that Te Au Reka is intended to be implemented in other courts over coming years, and
- ensure that the Family Court Rules are **sufficiently certain, plain English, transparent and easy to find** for those who need to use them.

The rule changes proposed are solely focused on what needs to change to enable digital ways of operating. We took these objectives into account as we developed the rule change proposals in the rest of this document.

⁴ To bring the Act into effect in the Family Court (or any other court) would require an Order in Council.

⁵ See footnote 3 for the Digital Strategy for Courts and Tribunals.

Question 1 Do you have any comments on these objectives?

We welcome your thoughts

We welcome your input on:

- the areas in which we have identified the Family Court Rules might need to change to enable Te Au Reka
- the specific questions we have asked throughout the document, and
- any other input you would like to provide to help us ensure this work achieves its objectives.

While our specific questions indicate matters on which we are particularly keen to hear feedback, we welcome comments about any of the proposed areas for rule changes which we have covered, even where there is no specific question.

Opportunity to discuss proposals, and how to provide feedback

We are available to meet to discuss the proposals either in person in Wellington, or over Teams. Please get in touch with Lucy Saunders, Principal Advisor (lucy.saunders@justice.govt.nz) if you would like to arrange a time for this.

We welcome your feedback by email, at a meeting, or both. Email feedback should be sent to Lucy at the email address above by **Monday, November 6**. Please also contact Lucy if you have any general queries about this consultation.

Please note that your submission may be subject to a request to the Ministry for information under the Official Information Act 1982. Personal details can be withheld under this Act, including your name and address. If you do not want any information you provide to be released, please state this clearly and explain why. For example, you may wish for some information to be kept confidential because it is sensitive personal information. The Ministry will take your views into account when responding to such requests. The Privacy Act 2020 governs how the Ministry collects, holds, uses, and shares personal information about you and the information you provide. You have the right to be given and correct this personal information. The Ministry's privacy statement can be found [here](#).

II. Proposed Changes to the Family Court Rules

The way in which Te Au Reka is intended to work will require changes to the Family Court Rules (*the Rules*). The proposed changes fall into two broad categories:

Section 1 Rule changes that enable new ways of achieving existing Family Court procedural requirements.

Section 2 Rule changes needed for operational clarity, to enable the proposed incremental roll-out, business continuity, and other operational considerations.

A note on drafting

A number of drafting approaches could be used to amend the Family Court Rules to enable the use of Te Au Reka in the Family Court.

One option is to have a new part in the Rules which would apply to Te Au Reka, be principle-based, and override the existing Rules in relation to the use of Te Au Reka in the Family Court. This option could enable some flexibility, because as Te Au Reka is implemented, new ways of working that are possible in the digital environment may become apparent, and principles may be easier to apply rather than prescriptive drafting.

We have set out some additional detail and, to illustrate how this could work, proposed principles in **Appendix 1**, which are broadly inspired by the Electronic Courts and Tribunals Act 2016. However, this, and other possible drafting approaches that enable appropriate amounts of flexibility, will be worked through after Ministerial policy decisions have been made.

Section 1: Enabling new ways of achieving existing Family Court procedural requirements

This section sets out possible rule changes arising from the way in which Te Au Reka will enable new ways of achieving existing Family Court procedural requirements.

1.1 Transmission of information relating to proceedings

Te Au Reka will enable information relating to Family Court proceedings to be transmitted digitally through the portal, where appropriate. This functionality impacts different areas of the Rules, as noted below.

- **Filing of court information:** Te Au Reka will enable information required under the Rules, including that which is in prescribed forms, affidavits (see below), or any other format to be filed through the online portal. When filing information using Te Au Reka, prescriptive rules, such as the requirement to file a certain number of copies of a document (rule 20(2)), and rules about the shape or format of documents or forms to be filed (for example rules 27 and 63-70, 72-74), would no longer need to apply. When an application to the court is made through Te Au Reka, the ‘proper office of the court’ will need to be indicated so it is clear where appearances will occur, in line with rule 28. Other rules such as 20A, 21, 22, 29 and 31 may also require amendment.
- **Service of documents and other information:** Te Au Reka will enable service (except personal service) to be carried out through the portal. Service through the portal can only be undertaken if:
 - express agreement to this method of service has been given by the receiving party for the particular proceedings, or
 - a party’s lawyer has indicated that they will accept service on behalf of the party for the specific proceedings.

When a party’s lawyer has indicated that they will accept service on behalf of the party for the specific proceedings in question, one of the ways they can be served is through Te Au Reka. However, the lawyer would still be required to provide an address for service (which would be a physical, postal or electronic address), so that self-represented parties can serve documents without being required to use Te Au Reka.

Enabling service through the portal, and the requirement for express agreement, may require changes to various rules including rules 39, 82, 100, 102, 105, 113A and 114, 116-121. The requirement for express agreement means that, in practice, service through Te Au Reka would not occur the first time someone is served with Family Court documents for particular proceedings. Other methods of serving information will continue to be available, including personal service.

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| Question 2 | Do you agree with the proposals to ensure a recipient has expressly agreed to be served through Te Au Reka for each set of proceedings? If not, what would you suggest instead? |
| Question 3 | Do you have any comments about the implications of enabling service to occur through Te Au Reka for parties, lawyers, or for any aspect of the Rules? |

- **Notifications, acceptances, and other information transmitted from the court:** Currently, the Rules require or enable a range of administrative information to be sent from the Registrar to a court participant, for example the acceptance of an application, a notice of hearing, information about scheduling, and other court notifications. Te Au Reka will enable this information to be transmitted through Te Au Reka rather than by post or any other format. This may require changes to various rules including rules 32, 99, 100, 250 and many others. Court participants will be able to choose whether to receive such notifications, etc, through the portal. Lawyers will be required to accept Registrar notifications through Te Au Reka. Please also see the comments on page 14, as part of section 2.2, which set out the proposed approach to ‘alerts’.
- **Other information transmitted by registry and Judges:** Court orders and judgments will also be able to be transmitted through Te Au Reka (see also section 1.2 on digital signatures and seals, which relates to this). This may require minor changes to various rules including 206, 206A and 206B.

1.2 Enabling digital signatures and other endorsement or authentication

Te Au Reka will enable signatures, and other means of approval, endorsement, authentication, or verification, to be evidenced through the portal where appropriate. This means that any such requirements in the Rules need to be able to be satisfied by carrying out the appropriate action through Te Au Reka. As well as the many rules which specify requirements for signatures, affected rules may include 76(3) and (4) (which include reference to marks or writing intended to convey authorisation, etc), and 206A (relating to authentication by a Judge).

In addition, rule 206B currently enables judgments to be **sealed** electronically by a Registrar. We intend that requirements in the Rules for both orders and judgments to be sealed should also be able to be satisfied digitally, through Te Au Reka, if, consistent with the existing rule, the method of digital sealing used:

- adequately identifies the Registrar, and
- is as reliable as is appropriate given the purpose for which, and the circumstances in which, the seal is required.

1.3 Affidavits

Where appropriate, we intend that affidavits and exhibits can be prepared, signed, sworn, or affirmed, and witnessed electronically, and can then be filed through Te Au Reka.

We consider that this could be enabled through:

- an amendment to the Oaths and Declarations Act 1957

- the proposed amendments to the Family Court Rules enabling digital signatures, etc (see section 1.2, above), and
- consequential amendments, or clarification of the Rules relating to affidavit processes, including to rules 156-168.

We are currently considering whether and when any amendment to the Oaths and Declarations Act 1957 could occur on this point. After the upcoming election, we will work with the incoming government to discuss this further.

1.4 Storage of information

We intend that information:

- that is transmitted and dealt with digitally, through Te Au Reka, can also be stored digitally as the official court record, and
- that was initially provided in a paper-based form can, if desirable, be converted to a digital form, saved in Te Au Reka, and this becomes the official court record.

Subject to Parliamentary Counsel Office (PCO) advice, this may not require any amendments to the Rules (for example, rule 424 which relates to record storage does not appear to exclude digital storage), but this matter is noted here for awareness.

1.5 Access to information relating to proceedings

We intend that appropriate access to information transmitted through Te Au Reka will be provided digitally, through the portal. In relation to how the Rules are structured, this applies in three main ways:

- **Access through Te Au Reka to information relating to current proceedings:** Parties to proceedings, their lawyers, and other court participants,⁶ through their unique logins, will be able to access substantively the same information through Te Au Reka as they can currently access in hard copy or email form. Changes to the Rules are likely to be needed, including to ensure that such access lasts for the appropriate amount of time.

For example, we propose:

- Parties can access their information until any appeal period has expired.
- Lawyers would also be able to access information until any appeal period has expired. Te Au Reka will allow for situations where a party changes their lawyer, enabling access to the relevant information for proceedings to be switched on and off.

⁶ See footnote 2 for a description of other court participants.

- Other court participants who require access such as programme providers, report writers, relevant government agencies and others, will have access until proceedings have concluded. Where needed, access can be reinstated, for example for an appeal or subsequent application, where applicable.

Access to information through Te Au Reka is not intended to replace the individual files which parties, lawyers or others may keep about particular proceedings. It will be possible for participants to download information from Te Au Reka which they would previously have accessed in hard copy or email form.

We propose that the way this information access is enabled in the Rules is clearly distinguished from the supervised access approach set out in rules 426-430 (see next bullet point). This is because the requirement in rules 426-430 for the supervision of an officer of the court to access information which would otherwise be available in hard copy or by email is not appropriate.

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| Question 4 | <p>(1) Do you agree that parties and lawyers should be able to access information through Te Au Reka until any appeal period has ended, with other court participants having access until the substantive proceedings have concluded?</p> <p>(2) If not, why not, and what time restrictions on access to information through Te Au Reka would you propose instead?</p> |
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- **Supervised access to Family Court information:** The Rules set out a regime where specified people can access court files and documents on those files under the supervision of an officer of the court: see rules 426-430. Amendments may be required to these rules to ensure:
 - that relevant information covered by these rules which is stored within Te Au Reka can be accessed through the portal, and
 - that the scope of these rules, compared with the scope of the rules required by the previous bullet, is clear.

We propose that the supervised access rules will continue to apply for permitted people, as set out in rule 427 or 428, to access information which they would not have previously received in hard copy, or where their right to access that information directly has now lapsed (see previous bullet relating to 'Access through Te Au Reka to information relating to current proceedings'). Such access is likely to only be available:

- in court offices, through a court computer, under the supervision of an officer of the court and for a fixed time frame, or

- under the supervision of another person as permitted by judicial direction, for example a lawyer to assist the court, or a lawyer for the child,

to ensure that the requirement for supervision can be satisfied.

- Question 5**
- (1) Do you think it will be clear when information can be accessed under the supervised access regime, compared to being able to be accessed directly through Te Au Reka?
 - (2) Do you have any suggestions to ensure these two regimes can operate in a complementary way? Please explain.

- **Judicial and registry access to information:** Te Au Reka will enable information relating to particular proceedings to be accessed by any registry staff of the court through the portal. It will also easily enable Judges to access information about other proceedings in the Family Court which relate to the same party or parties, so that decisions in one set of proceedings can take account of the other set of proceedings. We do not consider that any rule changes will be required to enable this.

1.6 Collection of information

As covered earlier, this work is intended, where applicable, to enable the various activities which are currently possible in the Family Court to be carried out through Te Au Reka. In relation to collection of information, this means that we are not proposing to collect *new* information. However, where information which is currently collected in the Family Court has a mandated government standard in place, we consider that standard should apply in terms of what information is collected.⁷ These standards do not automatically apply to court information because court information is under the control of the judiciary, not executive government.

Currently there are four mandated standards, and the judiciary has agreed to information being collected in the courts consistently with these standards. These are:

- date of birth
- person name
- street address, and
- gender and sex.

⁷ See [Mandated data standards - data.govt.nz](https://data.govt.nz/). Data standards (set by the Government Chief Data Steward) provide a common approach to collecting, sharing, and publishing data on a particular topic. The standards enable government to share data more effectively and efficiently, across existing privacy and security settings, to create a more complete view of data to inform government policy and investment decisions.

We propose to collect this information through Te Au Reka in line with the mandated data standards.

In the future, there may be proposals to collect new types of information from court participants, for example if new data standards are mandated and agreed to by the judiciary. If this is the case, further rule changes could be progressed at that time (including any needed changes to prescribed forms), and Te Au Reka could then be configured to enable this.

1.7 Requirement for lawyers to use Te Au Reka for certain actions

We propose that lawyers will be required to use Te Au Reka to provide information to and receive information from the court, unless the system is offline for any reason (see business continuity in section 2.5, below). This may require specific rules setting out which rules are required to be complied with through Te Au Reka by lawyers. Unless otherwise excused, if a lawyer provides information to the court by email or on paper, it will not be accepted for filing.

We propose there will be discretion to excuse this requirement in limited situations, for example when:

- a lawyer's online systems were down but they needed to urgently file information in the court, or
- the same lawyer was working in different registries, where one registry had implemented Te Au Reka but the other had not, and there were practical reasons why doing both sets of proceedings by email or hard copy was preferable.

We need to decide who would be authorised to excuse this requirement. This could sit with Judges or the new Family Court Associates, however we do not want to overload Judges or the Family Court Associates with minor matters. We propose that the authority to, in limited situations, excuse the requirement for lawyers to use Te Au Reka should sit with all judicial officers of the court (Registrars, Family Court Associates, and Judges), but in practice would predominantly be dealt with by Registrars.

As noted earlier, non-lawyers will be able, but not required, to use Te Au Reka.

Question 6

- (1) Do you think there should be other situations, in addition to those listed, where a lawyer should be able to be excused from the mandatory requirement to use Te Au Reka? Please explain.
- (2) Who do you think should be authorised to excuse this requirement?

General questions relating to Section 1

Question 7	(1) Do you have any comments about the way in which we have proposed Te Au Reka will work in any of the areas listed?
	(2) Are there other aspects of how Te Au Reka is likely to operate which we should also consider, in terms of impact on the Family Court Rules?
Question 8	(1) Have we identified the right Family Court Rules which may be impacted by these aspects of Te Au Reka, or not?
	(2) Which other Rules should we also consider?

Section 2: Operational considerations that will require rule changes

This section sets out areas where possible changes to the Rules may be needed for operational clarity, including those to enable Te Au Reka to be rolled out incrementally, and to ensure business continuity. Note that amendments to the definitions set out in rule 8 will be required for many of the changes.

2.1 Scope

An amendment to the Rules will be needed to describe Te Au Reka (or other terminology that is appropriate for the purposes of the Rules) in a way that ensures the scope and application of the new or amended rules is clear. Subject to PCO advice, we expect that the description can be quite simple, and can distinguish Te Au Reka from existing electronic facilities or mechanisms in the Family Court (such as the use of email) that will continue to be available.

2.2 Effective Timing and Alerts

Effective Timing

Because Te Au Reka will be able to be accessed at all times, the Rules will need to specify when certain actions taken using Te Au Reka are deemed to occur. Several rules and statutes set time limits, for example requiring actions to be done within a certain number of days of a specified event. It would not be appropriate if, for example, something filed through Te Au Reka just before midnight on a Friday was considered to be filed 3 days' earlier than something filed just after 9am on the Monday, even though the court was closed during this time.

Rule 119(3) currently sets out that documents transmitted by email to a lawyer after 5pm are considered to be served on the next working day. We propose that this approach should also be applied to additional situations for the purposes of Te Au Reka. Accordingly, we propose that:

- information filed or notified by a court participant through Te Au Reka after 5pm on a working day is deemed to be received on the next working day, and
- information served by a court participant through Te Au Reka after 5pm on a working day is deemed to be served on the next working day.

For other actions carried out through Te Au Reka, for example notifications or acceptances from the registry, and for when information is accessed, to the extent that this needs to be covered in the Rules, we propose that the effective time is the same as the time the action occurs.

Alerts

The approach taken to alerts may not need to be set out in the Rules. We are including information here for completeness, and to test the operational workability of the current proposals.

Court participants who are registered on Te Au Reka will be made aware of information waiting for them on the portal through an alert to whatever medium they have selected: for example, a text to a mobile phone number, an email to a specified email address, or another medium. We propose to enable different choices to be made for the timing of administrative and substantive alerts.

Administrative alerts could include matters such as the court confirming documents have been accepted for filing or court fees have been paid. To reduce high numbers of notifications, some people may choose to receive batches of administrative alerts together, for example at the end of the day.

Alerts for substantive matters could include when a person is served through Te Au Reka. It will be possible for a party to choose to be alerted when service (or another substantive matter) occurs, for example after 5pm. But the effective time of service (see above) would not be until the start of the next working day.

It is anticipated court participants will be able to choose when they receive both administrative and substantive alerts and will also be able to change their preference.

Question 9	Do you agree with the proposals for effective timing? Please explain.
Question 10	Do you agree with the proposals for the timing of alerts? Please explain.

2.3 Permissible actions

As noted for specific examples in section 1, rule amendments may be needed to ensure that all relevant actions that can currently be done under the Family Court Rules can be done through Te Au Reka, for example filing, serving, signing, sealing, sending, notifying, informing, issuing, etc.

2.4 Commencement of new rules

Commencement of the new rules, including, in particular, the requirements for lawyers, may need to be staggered, because Te Au Reka is intended to be rolled out in the Family Court registry by registry. We will seek PCO advice on the best and clearest mechanism to use to enable this commencement approach.

2.5 Business continuity if Te Au Reka is offline

The Rules will need to specify what should happen if Te Au Reka is offline or cannot be accessed or used for any reason, and this makes it difficult or impossible for court participants, including lawyers, to fulfil their obligations under the Rules. We propose that this is dealt with in a simple way, for example:

- all court participants will be expected to use another method to interact with the court for the period Te Au Reka is offline or inaccessible, such as email or in-person filing; and
- if there are reasons why using another method to interact with the court is not possible, a judicial officer (Judge, Family Court Associate or Registrar) can make a direction or order to specify what needs to occur in these circumstances.

Question 11	(1) Do you think the proposed approach to business continuity if Te Au Reka is offline or otherwise unavailable for any reason is workable? (2) If not, what other approach or approaches would you recommend and why?
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2.6 Interface issues

Through the drafting process, we will work with PCO to ensure that the interface between the existing Rules, including those which enable limited electronic ways of working, and the new rules to enable Te Au Reka, is clear.

2.7 Transitional issues

As noted above, once Te Au Reka is operational in a particular office of the Family Court, only new proceedings will be able to use the new system: existing proceedings will, in most cases, continue under the old Rules.⁸ Proceedings in the Family Court can sometimes continue for many years. In addition, some court participants may not choose or be able to use Te Au Reka. All of this means that transitional matters will continue for an extended period of time, and need to be carefully thought through, in case amendments to the Rules are required.

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| Question 12 | (1) What transitional issues do you think will arise? |
| | (2) What, in your view, is the best approach to managing each of these issues? |

General question relating to Section 2

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| Question 13 | Do you have any comments about the way in which we have proposed Te Au Reka will work in any of the operational areas listed in Section 2? |
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Concluding question

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| Question 14 | Do you have any other comments about things we need to consider when amending the Family Court Rules to enable Te Au Reka? |
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III. Next steps

We welcome any comments you may have on these proposals by **Monday, November 6**.

Following the consultation period, we will work with the judiciary to revise the proposals and then provide advice to the Minister of Justice. Cabinet approval will be required for any changes once drafting is complete.

⁸ As noted in Part 1 on page 3, some cases commenced before Te Au Reka is implemented in a court may nevertheless be managed in Te Au Reka.

Appendix: A possible principle-based approach to making changes to the Family Court Rules

We are exploring whether one option for making changes to the Family Court Rules might be to adopt a principle-based approach, such as that taken in the Electronic Courts and Tribunals Act 2016 (the Act) but updated to reflect the digital environment and the ways court participants will interact with the Family Court. This approach would need to clearly set out the relationship between such principles and other parts of the Family Court Rules.

Background to the Electronic Courts and Tribunals Act 2016

At the time it was enacted, the Act was intended to streamline the adoption of electronic processes in the courts and tribunals. However, it has not yet been enabled in any court.⁹ While we consider there is merit in the Act's approach, we do not consider it would, now, be sufficient to enable Te Au Reka. This is because:

- in some areas, the Act is fairly inflexible, and its provisions do not reflect the types of arrangements needed in a digital, rather than 'electronic' court environment;
- if the Act was enabled for Te Au Reka, additional regulations would also be required, which would take time and add complexity to this work, and
- some of the matters the Act covers such as filing and signing requirements for emailed documents have already been addressed in the Family Court Rules through changes made in late 2022.

Below, we have set out some indicative principles which could be added to the Family Court Rules to apply to Te Au Reka. These are provided as an example only - drafting decisions have not yet been made.

Indicative principles

1. A requirement to file a document in the court is met by providing the information which that document is required to contain by means of Te Au Reka.¹⁰
 - (a) This also meets any requirement to file that document in a particular form, or in writing, or in multiple copies, or in a particular office of the court.
 - (b) This does not affect the requirement to pay any applicable fee (r 75(1)(a)).
2. A requirement to serve a document on a person may be met by providing the information which that document is required to contain by means of Te Au Reka:
 - (a) to that person, where that person has confirmed by means of Te Au Reka that they agree to accept service through Te Au Reka; or
 - (b) to a lawyer representing that person, if the lawyer has confirmed that they are authorised to accept service on behalf of that person.

⁹ To bring the Act into effect in the Family Court (or any other court) would require an Order in Council.

¹⁰ The name Te Au Reka would not be used in the Rules but is used in this Appendix for brevity.

3. A person may provide information by confirming information that is already held in Te Au Reka.
4. A requirement for a document to be signed by a person (other than a witness) may be met by that person approving the information which that document is required to contain through Te Au Reka whether by adding an electronic signature or otherwise.
5. A requirement for a person's signature to be witnessed may be met by the witness confirming, through Te Au Reka, (a) their identity; and (b) that they have witnessed the person approving the information which that document is required to contain.
6. "Document" includes a notice, an appearance, or any other form of document contemplated by the Rules.
7. References in other parts of the Rules to documents, information and related terms include reference to that information in digital form in Te Au Reka.
8. A lawyer representing a participant in proceedings before the court must use Te Au Reka to provide information to the court and to receive information from the court, unless a Registrar, Family Court Associate, or Judge directs otherwise.